

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,

Plaintiff,

v.

USAPE LLC,

Defendant.

Case No. 1:23-cv-00660-PGG

PLAINTIFF NIKE, INC.’S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Nike, Inc. (“Nike”) respectfully gives notice of the following supplemental authority in support of Nike’s Opposition (Dkt. 27) to Defendant USAPE LLC’s (“BAPE”) Motion to Dismiss Nike’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt. 25-26). The case referenced below became available on December 22, 2023, after BAPE’s Motion was fully briefed.

Specifically, **Exhibit A** attached hereto is a December 22, 2023 Order from Judge Victor Marrero in *Nike, Inc. v. Reloaded Merch LLC & Bill Omar Carrasquillo*, Case No. 22-cv-10176-VM (S.D.N.Y. Dec. 22, 2023) (the “Reloaded Opinion”). The Reloaded Opinion denied the Defendants’ Motion to Dismiss Nike’s Complaint. There, like BAPE in this case, the Defendants moved to dismiss Nike’s Complaint pursuant to Rule 12(b)(6), arguing that Nike failed to sufficiently plead the elements necessary to state a claim for trade dress infringement because Nike failed to offer “a precise expression of the character and scope of the claimed trade dress” and “specify both which features are distinctive and how they are distinctive.” Reloaded Op. at 14-15. The Reloaded Opinion rejected this argument as inconsistent with Second Circuit law, and held, *inter alia*, that: (1) the production of certificates of registrations is sufficient to plead the character and scope of registered trade dress, and (Reloaded Op. at 25-27) (2) Nike’s trade dress registrations

are detailed and “illustrate why the USPTO’s trade dress approval process entitles registered marks to a presumption of validity.” Reloaded Op. at 30.

Here, because BAPE makes the same argument that the court rejected in the Reloaded Opinion, and there is an overlap in the Asserted Trademarks (*i.e.*, Reg. Nos. 6,386,694, 6,368,691, and 3,711,305), Nike respectfully brings the Reloaded Opinion to the Court’s attention.

Date: December 22, 2023

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing filing was served upon counsel of record via the Court's CM/ECF electronic filing system on December 22, 2023

By: /s/ Bridgette Gershoni
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